

ORIGINAL

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**JOHN D. PERKEY and
THERESA M. PERKEY**

Plaintiffs

vs.

**RELIABLE CARRIERS, INC.,
DANIEL JOSEPH BEMBEN,
and KENT,**

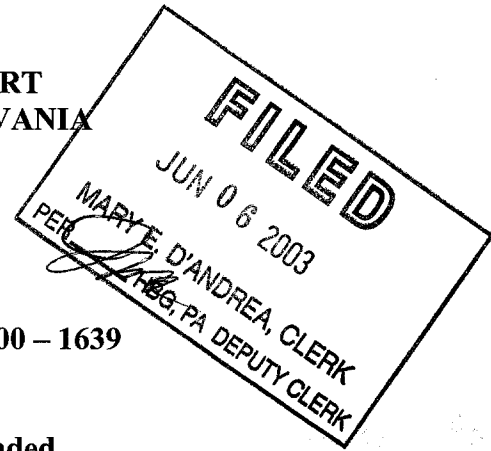
Defendants

Civil Action

Number 1: CV – 00 – 1639

Jury Trial Demanded

Magistrate Judge Smyser



**BRIEF OF JOHN D. PERKEY AND THERESA M. PERKEY
IN OPPOSITION TO MOTION IN LIMINE PRECLUDING RECOVERY
OF FAIR AND REASONABLE MEDICAL EXPENSES**

A. Procedural History and Facts:

The Plaintiff, John D. Perkey, was injured in an accident on the Pennsylvania Turnpike on September 15, 1998, when the rear wheels of the Defendant's tractor became dislodged and struck the tractor and trailer driven by the Plaintiff, John D. Perkey.

A Complaint was filed by the Plaintiff on September 14, 2000. The Defendant has filed an Answer with certain Affirmative Defenses on January 29, 2001. The parties are now completing their preparation for trial. The Plaintiffs were served with the Motion in Limine seeking to exclude medical expenses along with a supporting Brief.

B. Issue:

1. Whether Plaintiff should be able to recover the fair and reasonable value of the medical services rendered as a result of his injuries.

Suggested Answer: Yes

C. Argument:

The Defendants seek to exclude or limit the medical expenses the Plaintiff may submit to the jury. At the same time, the Defendants are requesting a setoff for all the medical expenses paid by the workers' compensation provider. The Plaintiff seeks to recover those medical expenses which he has paid to date for treatment related to injuries sustained in the accident.

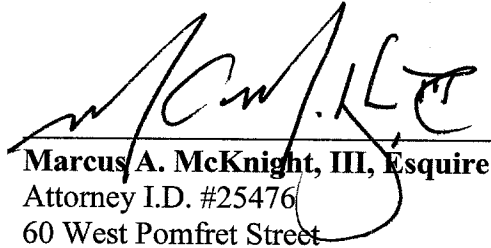
This Court has addressed the issue in the Memorandum and Order dated May 30, 2003. It is Plaintiff's understanding that the medical expenses will be submitted to the jury and then used as a setoff by the Court following the verdict. The Plaintiff does not object to this procedure although they have not conceded that the subrogation lien for medical and wage loss is not recoverable where the company which paid them was self insured. The medical expenses should therefore be presented to the jury and the verdict molded afterward to calculate the setoff.

D. Conclusion:

The medical expenses should be submitted to the jury in this case since the Defendants are seeking a setoff for said expenses paid by the workers' compensation provider in addition to the Plaintiff's out of pocket medical expenses.

Respectfully submitted,

IRWIN, McKNIGHT & HUGHES

A handwritten signature in black ink, appearing to read 'M. McKnight, III', is written over a horizontal line.

Marcus A. McKnight, III, Esquire
Attorney I.D. #25476
60 West Pomfret Street
Carlisle, PA 17013
(717) 249-2353
Attorney for Petitioner
John D. Perkey

Date: June 6, 2003

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CERTIFICATE OF SERVICE

I, Marcus A. McKnight, III, Esquire, hereby certify that a copy of attached Brief was served upon the following by depositing a true and correct copy of the same in the United States mail, First Class, postage prepaid in Carlisle, Pennsylvania, on the date referenced below and addressed as follows:

E. Ralph Godfrey, Esquire
Godfrey & Courtney, P.C.
P.O. Box 6280
Harrisburg, PA 17112

IRWIN, McKNIGHT & HUGHES

By:


Marcus A. McKnight, III, Esquire

60 West Pomfret Street

Carlisle, PA 17013

(717) 249-2353

Supreme Court I.D. No. 25476

Date: June 6, 2003